



(916) 445-3076

July 25, 1979

This letter is a reply to your question concerning the granting of the homeowners' exemption for property owned by you and your husband. Evidently, on March 1, 1978, you occupied a house in Orange County and your husband occupied a house in Fresno County. Your husband had been transferred to Fresno suddenly and circumstances prevented you from selling the Orange County house and moving to Fresno until after March 1, 1978, which is the tax lien date for that year. The homeowners' exemption is determined as of the lien date each year.

The first question raised is whether you may receive two homeowners' exemptions because of the forced separation of you and your husband. Our conclusion is that under the circumstances you describe, two exemptions cannot be granted. Section 3(k) of Article XIII of the State Constitution provides a homeowners' exemption for an owner's "principal residence". There may be two principal residences only in the circumstance that the separation of the family is a permanent one. When there are two residences involved, the "principal residence" is determined by a reference to the legal concept of domicile. Domicile means the place where one intends to live permanently. In your case the Orange County residence was not a permanent residence as you obviously intended to move to Fresno after March 1, 1978. Thus, we conclude that a homeowners' exemption should not have been allowed on the Orange County residence and should have been allowed on the Fresno County residence.

A more difficult question is what is required of the taxpayer when an exemption cannot be granted for a parcel of property. Sections 255.3 and 531.6 of the Revenue and Taxation Code require the taxpayer to notify the assessor when he is not eligible for exemption. Section 531.6 requires the assessor to make an escape assessment in the amount of the exemption when a homeowners' exemption has been incorrectly allowed. Interest usually is added to the amount, but in the case where the incorrect exemption was due to an assessor's error the amount of interest is forgiven.

July 25, 1979

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If a timely notice of noneligibility is not filed an escape assessment of 25 percent of the amount of the exemption is added to the assessment. As to timely filing of the notice of termination Property Tax Rule 135(b)(2) provides:

at least 30 days prior to the start of the fiscal year for which the exemption is to be first terminated

"An Advice of Termination is timely filed if, prior to the start of the fiscal year for which the exemption is to be first terminated, it is delivered to the assessor's office or is placed in the mail properly addressed with postage prepaid. A post office cancellation mark of June 30 or earlier is conclusive evidence of timely filing by mail. The assessor may accept other satisfactory proof that an Advice of Termination was mailed on or before June 30, provided such proof is offered before June 30 of the following year."

Your letter indicates that you sent the required termination notice to the Orange County Assessor in March 1978. If this is true and Orange County agrees with you, you may be able to avoid the 25 percent penalty. In any event, this is a matter solely between you and the Orange County Assessor's office. You must establish to their satisfaction that the required notice was sent to them by the dates mentioned in Rule 135.

Very truly yours,

Robert D. Milam  
Tax Counsel

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